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ORIGINAL

5 Attorneys for Defendants, MENU FOODS
 INCOME FUND, MENU FOODS, INC.,
 6 MENU FOODS LIMITED, MENU
 FOODS OPERATING LIMITED
 7 PARTNERSHIP, MENU FOODS
 MIDWEST CORP.

2007 APR -5 AM 10:36
 CLERK U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIF.
 LOS ANGELES

FILED

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

12 LOIS GRADY, KAYE STEINSAPIR,
 13 individually and on behalf of all others
 similarly situated,

14 Plaintiffs,

15 vs.

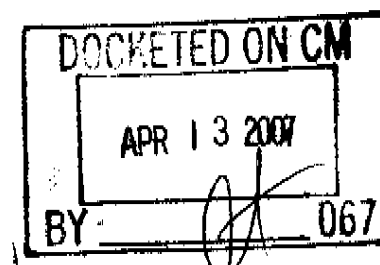
16 MENU FOODS INCOME FUND;
 17 FOODS, INC., MENU FOODS
 LIMITED, MENU FOODS
 18 OPERATING LIMITED
 PARTNERSHIP, MENU FOODS
 19 MIDWEST CORP., PETCO ANIMAL
 SUPPLIES, INC., NUTRO
 20 PRODUCTS, and DOES 1 through 100,
 inclusive,

21 Defendants.

CY07-02253DDP(PLA)
 CASE NO.

NOTICE OF REMOVAL OF
 ACTION; DEMAND FOR JURY
 TRIAL [28 U.S.C. § 1441(a)]

[FILED CONCURRENTLY WITH NOTICE OF
 REMOVAL]



Action Filed: March 27, 2007

24 PLEASE TAKE NOTICE that defendants, MENU FOODS INCOME FUND,
 25 MENU FOODS, INC., MENU FOODS LIMITED, MENU FOODS OPERATING
 26 LIMITED PARTNERSHIP, and MENU FOODS MIDWEST CORP. (hereinafter
 27 collectively referred to as "MENU FOODS" or "Defendants"), pursuant to 28 U.S.C §§
 28 1441 and 1446, file this Notice of Removal (hereinafter "Notice") of this action from the

1 Superior Court of the State of California for the County of Los Angeles to the United
2 States District Court for the Central District of California, Los Angeles Division. The
3 grounds for removal are as follows:

4 **I. INTRODUCTION**

5 1. Plaintiffs, LOIS GRADY and KAYE STEINSAPIR (hereinafter collectively
6 referred as "Plaintiffs"), commenced this products liability action in the Superior Court
7 of the State of California, County of Los Angeles, entitled LOIS GRADY, KAYE
8 STEINSAPIR, individually and on behalf of all others similarly situated, vs. MENU
9 FOODS INCOME FUND; FOODS, INC., MENU FOODS LIMITED, MENU FOODS
10 OPERATING LIMITED PARTNERSHIP, MENU FOODS MIDWEST CORP., PETCO
11 ANIMAL SUPPLIES, INC., NUTRO PRODUCTS, and DOES 1 through 100, inclusive,
12 Case No. BC 368561, on March 27, 2007. Plaintiffs allege that their respective pets
13 (cats) became ill upon consuming pet food manufactured and distributed by Defendants.
14 Plaintiffs further claim that they sustained compensatory damages, including veterinarian
15 bills and related expenses, as a result of their pets' illnesses. A true and correct copy of
16 the Summons and Complaint are attached hereto and incorporated by reference as
17 **Exhibit A.**

18 2. On April 2, 2007, MENU FOODS was served a copy of the Summons and
19 the Complaint. Pursuant to 28 U.S.C. § 1441, this Notice of Removal is timely filed, as
20 it was filed within thirty days (30) of the defendants being served with a copy of the
21 Summons and the Complaint. Ibid.

22 3. As more fully set forth below, this is a civil action over which this Court has
23 original jurisdiction under 28 U.S.C. § 1332(d)(2), and this action is removable under 28
24 U.S.C. § 1441, because it is a civil action in which the matter in controversy exceeds the
25 sum or value of \$5,000,000, exclusive of interest and costs, and is a class action between
26 citizens of different States. Therefore, pursuant to 28 U.S.C. § 1441(a), the Defendants
27 may remove this action to this Court.

28 //

1 II. THIS COURT HAS SUBJECT MATTER JURISDICTION

2 A. The Amount in Controversy Requirement Exceeds \$5,000,000.

3 4. It is apparent from the face of the Complaint that the Plaintiffs seek
4 recovery of an amount in excess of \$5,000,000, exclusive of costs and interest. Plaintiffs
5 filed this class action on behalf of themselves as individuals and similarly situated
6 individuals whose pets became ill and/or died after consuming various brands of
7 allegedly tainted wet, or "cuts and gravy" style, dog and cat food manufactured by
8 Defendants and distributed and sold throughout the State of California and the country.
9 Plaintiffs allege that they have sustained compensatory damages in the form of
10 veterinarian bills and related expenses as a result of their respective pets' illnesses. In
11 addition, Plaintiffs allege that countless pets have died, and thousands of pets throughout
12 the State of California have experienced kidney failure and/or suffered other serious
13 adverse health consequences, and have required extensive medical care, as a result of
14 consuming the affected pet food. Plaintiffs acknowledge that the members of the
15 putative class are numerous, and although the entire class is unknown to Plaintiffs at this
16 time, it is estimated that the entire class is greater than 1,000 individuals. Plaintiffs'
17 prayer for relief seeks special damages, including veterinary expenses and loss of
18 earnings; disgorgement of all profits; punitive damages; restitution based on Defendants'
19 alleged unjust enrichment; and attorney fees, on behalf of themselves and all the
20 members of the class. Further, nowhere in the Complaint do the Plaintiffs limit the
21 amount in controversy to less than \$5,000,000. See **Exhibit A**.

22 5. "Where the class action complaint does not specify the amount of damages
23 sought, the removing defendant must prove by a preponderance of the evidence that the
24 amount in controversy requirement has been met." Davis v. Chase Bank U.S.A., 453
25 F.Supp.2d 1205, 1208 (C.D.Cal. 2006). Under this standard, "the defendant must
26 provide evidence that is 'more likely than not' that the amount in controversy satisfies
27 the federal diversity jurisdictional amount requirement." Davis, 453 F.Supp.2d at 1208,
28 citing Abrego Abrego v. The Dow Chemical Co., 443 F.3d 67 676, 683 (9th Cir. 2006).

1 6. Based on Plaintiffs' own allegations that MENU FOODS, alone, has issued
2 what is purported to be one of the largest, if not the largest, recalls (approximately
3 60,000,000 units) of products in the pet food industry's history, and the types of damages
4 claimed in the Complaint, it is apparent that the amount in controversy exceeds
5 \$5,000,000, exclusive of costs and interest.

6 7. Moreover, there are numerous pending class actions against MENU in
7 various federal judicial districts in which the named Plaintiffs allege that jurisdiction
8 exists under 28 U.S.C. § 1332(d)(2). There is no reason to believe that the damages or
9 amount in controversy, exclusive of costs and interests, claimed by the Plaintiffs in this
10 civil action will be less than those alleged in the pending federal cases.

11 8. The Defendants have, therefore, met their burden of showing a reasonable
12 probability that the amount in controversy satisfies the federal jurisdictional amount.

13 **B. Complete Diversity of Citizenship Exists.**

14 9. There is complete diversity of citizenship between the Plaintiffs and the
15 Defendants in this action. Diversity in a class action is established when "any member
16 of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. §
17 1332(d)(2)(A).

18 10. According to the Complaint, the named Plaintiffs are citizens of the State of
19 California.

20 11. Defendant Menu Foods Income Fund is a Canadian income fund with its
21 principal executive offices located at 8 Falconer Drive, Streetsville, Ontario, Canada
22 L5N 1B1. Defendant Menu Foods, Inc. is a New Jersey corporation with its principal
23 executive offices located at 9130 Griffith Morgan Lane, Pennsauken, New Jersey 08110.
24 Defendant Menu Foods Midwest Corporation is a Delaware corporation with its
25 principal executive offices located at P.O. Box 1046, 1400 East Logan Avenue, Emporia,
26 Kansas 66801. Menu Foods Midwest Corporation is a wholly owned subsidiary of
27 Menu Foods, Inc. Pursuant to 28 U.S.C. § 1332(c)(1), "a corporation shall be deemed to
28 be a citizen of any State by which it has been incorporated and of the State where it has

1 its principal place of business." 28 U.S.C. §1332(c)(1). Thus, the MENU FOODS
2 corporations are deemed to be citizens of the respective states listed above, none of
3 which is the State of California.

4 12. The other defendants PETCO ANIMAL SUPPLIES, INC. and NUTRO
5 PRODUCTS, INC., have not appeared in this action to date. The "DOE" defendants are
6 wholly fictitious and sham parties against whom no relief is, or could be, sought in this
7 action. Pursuant to 28 U.S.C. § 1441(a), this Court should disregard the citizenship of
8 any defendant sued under this fictitious name. Accordingly, it is not necessary that any
9 parties join in this Notice of Removal of Action.

10 13. This case should be removed to the United States District Court for the
11 Central District of California pursuant to 28 U.S.C. §§ 1332 and 1441, because: (1) the
12 Plaintiffs are citizens of the State of California; (2) MENU FOODS is not a citizen of the
13 State of California; and (3) the amount in controversy exceeds \$5,000,000, exclusive of
14 costs and interest.

15 **III. PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED**

16 14. This Notice of Removal is timely according to 28 U.S.C. § 1446(b).

17 15. The Defendants, in good faith, believe that the amount in controversy
18 exceeds \$5,000,000, exclusive of costs and interest, and complete diversity of citizenship
19 exists.

20 16. The United States District Court for the Central District of California
21 embraces the county in which the state court action is now pending. Therefore, this
22 action is properly removed to the Central District of California pursuant to 28 U.S.C. §
23 93(a)(1).

24 17. Pursuant to 28 U.S.C. §1446(d), the Defendants are filing written notice of
25 this removal to all adverse parties and will file a copy of the notice with the clerk of the
26 State court in which this action is currently pending.

27 //

28 //

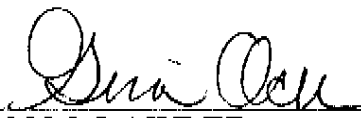
1 WHEREFORE, the defendants, MENU FOODS INCOME FUND, MENU
2 FOODS, INC., MENU FOODS LIMITED, MENU FOODS OPERATING LIMITED
3 PARTNERSHIP, and MENU FOODS MIDWEST CORP, respectfully move this action
4 from the Superior Court of the State of California for the County of Los Angeles to the
5 United States District Court for the Central District of California pursuant to 28 U.S.C.
6 §§ 1332, 1441, and 1446.

7
8 **DEMAND FOR JURY TRIAL**

9 Pursuant to Federal Rule of Civil Procedure 38, defendants, MENU FOODS
10 INCOME FUND, MENU FOODS, INC., MENU FOODS LIMITED, MENU FOODS
11 OPERATING LIMITED PARTNERSHIP, and MENU FOODS MIDWEST CORP.,
12 hereby demand trial by jury in this action.

13
14 DATED: April 5, 2007,

MURCHISON & CUMMING, LLP

15
16 By: 
17 JEAN M. LAWLER
18 GINA E. OCH
19 Attorneys for Defendants,
20 MENU FOODS INCOME FUND, MENU
21 FOODS, INC., MENU FOODS
22 LIMITED, MENU FOODS OPERATING
23 LIMITED PARTNERSHIP, MENU
24 FOODS MIDWEST CORP.
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 South Grand Avenue, 9th Floor, Los Angeles, California 90017-4613.

On April 5, 2007, I served true copies of the following document described as **CERTIFICATE OF SERVICE OF NOTICE TO ADVERSE PARTY OF REMOVAL TO FEDERAL COURT** on the interested parties in this action as follows:

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Murchison & Cumming's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 5, 2007, at Los Angeles, California.


MARJORIE K. DE JOHNETTE

3:45

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

MENU FOODS INCOME FUND, MENU FOODS, INC., MENU FOODS LIMITED, MENU FOODS OPERATING LIMITED PARTNERSHIP, MENU FOODS MIDWEST CORP., PETCO ANIMAL SUPPLIES, INC., NUTRO PRODUCTS, INC. and Does 1 through 100, inclusive.

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

LOIS GRADY, KAYE STEINSAPIR, individually and on behalf of all others similarly situated.

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
COURT CLERK
OF ORIGINAL FILED
Los Angeles Superior Court

MAR 27 2007

John A. Clark, Executive Officer/Clerk
By , Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form (if you want the court to hear your case). There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Los Angeles Superior Court
111 N.Hill St.

Los Angeles, CA 90012-3014

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Gregory D. Helmer, Andrew H. Friedman, Helmer & Friedman, LLP; 723 Ocean Front Walk; Venice, CA 90291; (310) 396-7714

DATE:

(Fecha)

MAR 27 2007

JOHN A. CLARKE, CLERK

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons, (POS-010)).
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

Dianis Garcia

- ☒ on behalf of (specify):

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

- ☐ by personal delivery on (date):

**NOTICE OF CASE ASSIGNMENT
LOS ANGELES SUPERIOR COURT**

CASE NUMBER _____

BC368561

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

Your case is assigned for all purposes to the judicial officer indicated below. There is additional information on the reverse side of this form.

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Gregory Alarcon	36	410	Hon. William Highberger	32	406
Hon. Alice E. Alton	28	318	Hon. Ernest Hiroshige	54	512
Hon. Conrad Aragon	49	509	Hon. Jane Johnson	56	514
Hon. Helen I. Bendix	18	308	Hon. Elizabeth Allen White	48	505
Hon. Elihu M. Berle	42	416	Hon. Malcolm H. Mackey	55	515
Hon. Tricia Ann Bigelow	23	315	Hon. Jon M. Mayeda	72	731
Hon. Soussan Bruguera	71	729	Hon. Rita Miller	16	308
Hon. Susan Bryant-Deason	52	510	Hon. David L. Minning	61	632
Hon. James C. Chalfant	13	630	Hon. Aurelio Munoz	47	507
Hon. Victoria Chaney	324	CCW	Hon. Mary Ann Murphy	25	317
	89	532	Hon. Joanne O'Donnell	37	413
Hon. Ralph W. Dau	57	517	Hon. Victor H. Person	39	416
Hon. Maureen Duffy-Lewis	38	412	Hon. Mel Recana	45	529
Hon. James R. Dunn	26	316	Hon. Andria K. Richey	31	407
Hon. Mark Mooney	68	617	Hon. Teresa Sanchez-Gordon	74	735
Hon. William F. Fahey	78	730	Hon. Ann I. Jones	40	414
Hon. Irving Feffer	51	511	Hon. John P. Shook	53	513
Hon. Edward A. Ferns	69	621	Hon. Ronald M. Sohigian	41	417
Hon. Kenneth R. Freeman	64	601	Hon. Michael L. Stern	62	600
Hon. Haley J. Fromholz	20	310	Hon. Mary Thornton House	17	313
Hon. Richard Fruin	15	307	Hon. Rolf M. Treu	58	516
Hon. Terry Green	14	300	Hon. John Shepard Wiley Jr.	50	508
Hon. Elizabeth A. Grimes	30	400	Hon. Judith C. Chirfin	19	311
Hon. Paul Gutman	34	406	Hon. George Wu	33	409
Hon. Robert L. Hess	24	314		35	411
	3	224	OTHER		

Given to Plaintiff of record on _____

John A. Clarke, Executive Officer/Clerk

_____, DEPUTY
CLERK

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Gregory D. Helmer, SBN 150184 Andrew H. Friedman, SBN 153166 723 Ocean Front Walk Venice, CA 90291 TELEPHONE NO.: (310) 396-7714 FAX NO.: (310) 396-9215		FOR COURT USE ONLY CONFIRMED COPY OF ORIGINAL FILED Los Angeles Superior Court MAR 27 2007 John A. Clark, Executive Officer/Clerk By <u>[Signature]</u> Deputy
ATTORNEY FOR (Name): Lois Grady, Kaye Steinsapir SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill St. MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012-3014 BRANCH NAME: Central		
CASE NAME: Lois Grady, et al. v. Menu Foods Income Fund		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
CASE NUMBER: BC368561 JUDGE: DEPT:		

Items 1–5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/VPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input checked="" type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/VPD/WD (23) Non-P/VPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/VPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (18)	Contract <input type="checkbox"/> Breach of contract/warranty (08) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (06) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|---|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |

3. Type of remedies sought (check all that apply):

- a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): Four

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date:

Gregory D. Helmer

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

2136281906

02:54:14 p.m.

03-27-2007

5/5

1 HELMER • FRIEDMAN, LLP
 Gregory D. Helmer, P.C. (S.B. #150184)
 2 Andrew H. Friedman, P.C. (S.B. # 153166)
 723 Ocean Front Walk
 3 Venice, California 90291
 Telephone: (310) 396-7714
 4 Facsimile: (310) 396-9215

5 Paul L. Hoffman, SBN 071244
 Michael D. Seplow, SBN 150183
 6 Michael S. Morrison, SBN 205320
 SCHONBRUNDE SIMONE SEFLOW
 7 HARRIS & HOFFMAN LLP
 723 Ocean Front Walk
 8 Venice, CA 90291
 Telephone: (310) 396-0731
 9 Facsimile: (310) 399-7040

10 Attorneys for Plaintiffs

CONFIRMED COPY
 OF ORIGINAL FILED
 Los Angeles Superior Court

MAR 27 2007

John A. Clark, Executive Officer/Clerk
 By *[Signature]* Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA 8C368561
 12 FOR THE COUNTY OF LOS ANGELES

13 LOIS GRADY, KAYE STEINSAPIR,
 14 individually and on behalf of all others
 15 similarly situated,

16 Plaintiff,

17 v.

18
 19 MENU FOODS INCOME FUND,
 20 MENU FOODS, INC., MENU FOODS
 21 LIMITED, MENU FOODS
 22 OPERATING LIMITED
 23 PARTNERSHIP, MENU FOODS
 24 MIDWEST CORP., PETCO ANIMAL
 25 SUPPLIES, INC., NUTRO PRODUCTS,
 26 INC. and DOES 1 through 100,
 27 inclusive,

28 Defendants.

CASE NO:

COMPLAINT FOR DAMAGES:

CLASS ACTION (Plaintiff
 Class) (California Code of Civil
 Procedure §382)

1. STRICT PRODUCTS LIABILITY
2. NEGLIGENCE
3. BREACH OF WARRANTIES
4. UNFAIR BUSINESS PRACTICES BUSINESS & PROFESSIONS CODE §§ 17200 ET SEQ.)

DEMAND FOR JURY TRIAL

1.

COMPLAINT FOR DAMAGES

1 Plaintiffs Lois Grady and Kaye Steinsapir, individually on behalf of
2 themselves, and on behalf all others similarly situated, and the general public, on
3 information and belief, make the following allegations to support this complaint:
4

5
6 **INTRODUCTION**

7 1. Plaintiffs file this class action on behalf of themselves and similarly
8 situated individuals whose pets died and/or became seriously ill after ingesting various
9 brands of tainted wet, or "cuts and gravy" style, dog and cat food manufactured by
10 defendant Menu Foods and distributed and sold throughout the State of California and the
11 Country. The food, including popular brands such as Iams, Eukanuba, Nutro Natural
12 Choice, Nutro Ultra, Special Kitty, Loving Meals, Winn Dixie, Science Diet and other
13 labels that were marketed to consumers as healthy and nutritious food for their pets, was
14 found to contain aminopterin – a chemical substance used to kill rats and other rodents.
15 Although Menu Foods has issued what is purported to be one of the largest, if not the
16 largest, recalls of products in the pet food industry's history, countless pets have died,
17 experienced kidney failure and/or suffered other serious adverse health consequences as a
18 result of eating the contaminated food.
19

20 **NATURE OF THE ACTION**

21 2. Plaintiffs bring this action on behalf of themselves and numerous others
22 pet owners throughout the State of California whose pets became ill and/or died after
23 having ingested tainted pet food which was manufactured and distributed by Defendants.
24

25 **JURISDICTION AND VENUE**

26 3. This Court has personal jurisdiction over the defendants because they are
27 residents of and/or doing business in the State of California.
28

DEFENDANTS

7. Plaintiffs are informed and believe and thereon allege that Defendants MENU FOODS INCOME FUND, MENU FOODS, INC., MENU FOODS LIMITED, MENU FOODS OPERATING LIMITED PARTNERSHIP, MENU FOODS MIDWEST CORP. (the Menu Foods entities shall hereinafter be collectively referred to as "MENU FOODS"), PETCO ANIMAL SUPPLIES, INC. (hereinafter "PETCO"), NUTRO PRODUCTS, INC. and Does 1 through 100, are corporations or other business entities doing business in the State of California. Plaintiffs are further informed and believe and thereon allege that all named Defendants either manufactured, sold, re-sold, inspected, marketed, distributed and/or placed into the stream of commerce numerous brands of pet food, including, without limitation, Nutro Natural Choice, Iams, Eukanuba, Nutro Ultra, Special Kitty, Loving Meals, Winn Dixie, Science Diet and numerous other brands, which have since been recalled (hereinafter referred to as the "Pet Food" or "PRODUCT") that was ingested by pet animals belonging to Plaintiffs and others similarly situated, and caused these pets to become ill and/or die. As a result of Defendants' conduct, Plaintiffs, and all others similarly situated, sustained damages.

8. Plaintiffs are further informed and believe and thereon allege that defendant PETCO's principal place of business and corporate headquarters are located in the State of California.

9. Plaintiffs are informed and believe and thereon allege that Defendant Nutro Products Inc., which distributes Nutro Natural Choice and other pet foods, is a corporation duly registered under the laws of the State of California.

10. The true names and capacities, whether corporate, associate, individual or otherwise of defendants DOES 1 through 100, inclusive, are unknown to plaintiffs,

1 who therefore sues said defendants by such fictitious names. Each of the defendants
2 designated herein as a DOE is negligently or otherwise legally responsible in some
3 manner for the events and happenings herein referred to and caused injuries and damages
4 proximately thereby to the plaintiffs, as herein alleged. Plaintiffs will ask leave of Court
5 to amend this Complaint to show their names and capacities when the same have been
6 ascertained.

7
8 11. At all times herein mentioned, defendants, and each of them, were the
9 agents, representatives, employees, successors and/or assigns, each of the other and at all
10 times pertinent hereto were acting within the course and scope of their authority as such
11 agents, representatives, employees, successors and/or assigns.

12
13 **CLASS ACTION ALLEGATIONS**

14 12. Plaintiffs bring this action on behalf of themselves and all others
15 similarly situated as a class action pursuant to California Code of Civil Procedure Section
16 382. The class that Plaintiffs seek to represent (herein referred to as " PLAINTIFF
17 CLASS") is composed of and defined as follows:

18 **All persons within the State of California whose pets ingested the Pet Food**
19 **and, as a result, became ill and/or died.**
20

21 13. The members of the class are so numerous that joinder of all members
22 would be unfeasible and not practicable. The membership of the entire class is unknown
23 to Plaintiffs at this time; however, it is estimated that the entire class is greater than 1,000
24 individuals, but the identity of such membership is readily ascertainable via inspection of
25 records and other documents maintained by Defendants.

26 //

27 //

1 14. There are common questions of law and fact as to the class which
2 predominate over questions affecting only individual members including, without,
3 limitation:

- 4 A. Did Defendants either manufacture, sell, inspect, market, distribute
5 and/or place the Pet Food into the stream of commerce?
6 B. Was the Pet Food a defective product?
7 C. Did the Defendants knowingly or negligently make false statements
8 about the safety of the Pet Food?
9 D. Did Plaintiffs and others similarly situated rely upon Defendants' false
10 representations regarding the safety of the Pet Food for consumption by
11 animals?
12 E. Did Defendants Breach any warranties regarding the safety of the Pet
13 Food?
14 F. Did Defendants know, or should they have known, about the risks posed
15 to pets consuming the Pet Food, and if so, when did they know of this
16 risk?
17 G. Did the Pet Food cause pets belonging to Plaintiffs and others similarly
18 situated to become ill and/or die?
19 H. Did Plaintiffs and others similarly situated suffer compensatory damages
20 as a result of Defendants' conduct?
21 I. Whether Defendants engaged in unfair business practices;
22 J. Whether Defendants acted with, malice, oppression and fraud thereby
23 justifying the award of punitive and exemplary damages.
24 K. The effect upon and the extent of damages suffered by the PLAINTIFF
25 CLASS and the appropriate amount of compensation.
26

27 15. The claims of Plaintiffs pled as class action claims are typical of the
28

1 claims of all members of the class as they arise out of the same course of conduct and are
2 predicated on the same violation(s) of the law. Plaintiffs, as representative parties, will
3 fairly and adequately protect the interests of the class by vigorously pursuing this suit
4 through their attorneys who are skilled and experienced in handling matters of this type.
5

6 16. The nature of this action and the nature of the laws available to the
7 PLAINTIFF CLASS make use of the class action format a particularly efficient and
8 appropriate procedure to afford relief to the PLAINTIFF CLASS. Further, this case
9 involves corporate defendants and a large number of individuals possessing claims with
10 common issues of law and fact. If each individual were required to file an individual
11 lawsuit, the corporate defendants would necessarily gain an unconscionable advantage
12 since they would be able to exploit and overwhelm the limited resources of each
13 individual plaintiff with its vastly superior financial and legal resources. Proof of a
14 common business practices or factual patterns, of which the named plaintiffs experienced,
15 is representative of the class mentioned herein and will establish the right of each of the
16 members of the class to recovery on the claims alleged herein.
17

18 17. The prosecution of separate actions by the individual class members,
19 even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts or
20 adjudications with respect to the individual class members against the defendants herein;
21 and/or (b) legal determinations with respect to individual class members which would, as
22 a practical matter, be dispositive of the other class members not parties to the
23 adjudications or which would substantially impair or impede the ability of class members
24 to protect their interests. Further, the claims of the individual members of the class are
25 not sufficiently large to warrant vigorous individual prosecution considering all of the
26 concomitant costs and expenses attending thereto. Plaintiffs are also unaware of any
27 difficulties that are likely to be encountered in the management of this action that would
28

1 preclude its maintenance as a class action.
2

3 **FACTS COMMON TO ALL COUNTS**

4 18. Plaintiffs are informed and believe and thereon allege that Defendants
5 manufactured, sold, re-sold, inspected, marketed, distributed and/or placed into the stream
6 of commerce various brands of the Pet Food. The Pet Food was marketed and advertised
7 by Defendants throughout the State of California as being safe and healthy for pets to
8 consume. Moreover, the Pet Food was sold in pet stores throughout California, including
9 stores owned and operated by Defendant PETCO.
10

11 19. Plaintiffs are informed and believe and thereon allege that consumers
12 throughout California purchased the Pet Food, which was fed to their cats and dogs.
13 Plaintiffs are further informed and believe and thereon allege that as a result of ingesting
14 the Pet Food, thousands of pets became seriously ill and required extensive medical care.
15 Plaintiffs are further informed and believe and thereon allege that numerous pet animals
16 have died as a direct result of ingesting the Pet Food. On or about March 16, 2007,
17 Defendant MENU FOODS, the principal manufacturer of the tainted Pet Food, issued a
18 recall of the Pet Food (which was manufactured between December 3, 2006 and March 6,
19 2007). Plaintiffs are further informed and believe and thereon allege that prior to the
20 recall, Defendant MENU FOODS and other defendants either knew or should have
21 known that the Pet Food was defective and presented a serious risk to the health and
22 safety of animals.
23

24 20. In or about March, 2007, Plaintiff Lois Grady fed Special Kitty cat
25 food, one of the brands of tainted Pet Food, to her cat, Riley. Ms. Grady had purchased
26 the Special Kitty food at a Wal-Mart store in Fresno, California. Shortly thereafter, Riley
27 refused to eat his food, became lethargic and suffered from bouts of vomiting. Riley also
28

1 lost weight and appeared seriously ill. Ms. Grady became extremely concerned and took
2 Riley to the veterinarian. After performing blood and urinalysis tests, the veterinarian
3 diagnosed Riley as suffering from kidney failure. Riley required extensive veterinarian
4 treatment and will require a special diet for the remainder of his life. Prior to that time,
5 Riley had been in excellent health. Ms. Grady is informed and believes that her cat's
6 illness was directly caused by the ingestion of Special Kitty, which is one of the
7 numerous tainted pet food products manufactured and distributed by Defendant MENU
8 FOODS. As a result, Ms. Grady has sustained compensatory damages, including, without
9 limitation, veterinary bills and related expenses.

10

11 21. Plaintiff Kaye Steinsapir fed her four-year-old cat, Lila, Nutro Natural
12 Choice cat food – one of the brands of tainted Pet Food – since Lila was a kitten. She
13 continued to feed Lila Nutro Natural choice through and including March, 2007. Ms.
14 Steinsapir, who had purchased the Nutro Natural Choice at a PETCO store in Santa
15 Monica, California, believed she was feeding Lila one of the healthiest, nutritious cat
16 foods available on the market. Prior to March, 2007, Lila was a healthy, vibrant cat
17 without any medical conditions. However, in or about March, 2007, Lila became
18 seriously ill after Ms. Steinsapir fed her Nutro Natural Choice foil pouches. Lila began
19 vomiting repeatedly and drinking an excessive amount of water. Although Lila had
20 always had a very healthy appetite prior to March, 2007, she stopped eating her wet food.
21 Ms. Steinsapir brought Lila to her veterinarian, who diagnosed Lila with acute kidney
22 failure. Lila was subsequently hospitalized and required extensive veterinary treatment,
23 including, but not limited to, intravenous fluids and a urinary catheter that required her to
24 be placed under anesthesia. Prior to ingesting the tainted Pet Food, Lila had been playful,
25 full of energy and never suffered any illness whatsoever. Ms. Steinsapir is informed and
26 believes and thereon alleges that Lila will require a special diet for the rest of her life and
27 will also require veterinary care for the foreseeable future. Ms. Steinsapir is informed and
28

1 believes and thereon alleges that her cat's illness was directly caused by the ingestion of
2 Nutro Natural Choice, which is one of the numerous tainted pet food products
3 manufactured by Defendant MENU FOODS. As a result, Ms. Steinsapir has sustained
4 compensatory damages, including, without limitation, veterinary bills and related
5 expenses.

6
7 22. Plaintiffs are informed and believe and thereon allege that there are
8 thousands of pets throughout California who ingested the Pet Food and, as a result,
9 became ill and/or died and required their owners to incur substantial veterinarian and
10 other related expenses.

11
12 23. Plaintiffs are informed and believe and thereon allege that the Pet Food
13 was defective due to a defect in design, manufacturing, reconditioning, inspection and/or
14 warning. In particular, Plaintiffs are informed and believe and thereon allege that the Pet
15 Food was contaminated with dangerous substances, including aminopterin, which is a
16 form of rat poison and which causes death and/or serious illness when ingested by dogs or
17 cats.

18
19 24. Plaintiffs are informed and believe and thereon allege that Defendants,
20 and each of them, knew or should have known that the Pet Food was defective and posed
21 an unreasonable safety risk to the safety of animals who would consume it. Plaintiffs are
22 further informed and believe and thereon allege that Defendants concealed from members
23 of the consuming public, including Plaintiffs and others similarly situated, the nature and
24 scope of the product defect.

25
26 25. Plaintiffs are informed and believe and thereon allege that in furtherance
27 of their active concealment and suppression of information concerning the product
28

1 defect, defendants caused to be published deceptive and misleading advertising that
2 emphasized that their products were safe, healthy and free from known safety defects,
3 when in fact they were not. Plaintiffs are informed and believe and thereon allege that
4 Defendants intended such false and deceptive advertising to lull the consuming public into a
5 false sense of security by inducing reliance on Defendants' claims of high quality and safety.
6

7 26. Plaintiffs are informed and believe and thereon allege that at all relevant
8 times, Defendants' knowledge and understanding of the product defect and its resulting
9 danger to animals was substantially greater than that of Plaintiffs and others similarly
10 situated, who were unaware of the nature or cause of the product defect, and had no
11 access to Defendants' research and testing results, product statistics, or other internal
12 information in that regard.
13

14 27. Plaintiffs are informed and believe and thereon allege that Defendants
15 were aware of the risk of serious injury caused by the sale of the Pet Food, but that
16 defendants deliberately chose not to fix, recall or correct these problems because of the
17 expense involved, thus placing their own economic interests over those of consumers
18 such as plaintiffs and others similarly situated.
19

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28 //

FIRST CAUSE OF ACTION
STRICT PRODUCTS LIABILITY
(Against All Defendants)

28. Plaintiffs hereby incorporate by reference the allegations in paragraphs 1 through 28, inclusive as though set forth herein in their entirety.

29. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned, said defendants, and each of them, and their successors, designed, manufactured, built, assembled, adjusted, repaired, inspected, re-sold and/or introduced into interstate and/or intrastate commerce for sale therein, sold, distributed, supplied, maintained, controlled, cared for, supervised, attended to, inspected, engaged in testing, labeling, transporting, storing, advertising, marketing, selling and recommending the Pet Food to the general public and other ultimate users (including Plaintiffs and others similarly situated) within the State of California. Defendants represented to the general public, including Plaintiffs and others similarly situated, that the Pet Food was safe and healthy for animals to eat.

30. Plaintiffs are informed and believe and thereon allege that the Pet Food was defective, unsafe, hazardous, perilous, insecure, unfit, and dangerous for its intended use, and the purposes for which it was intended, by reason of defect(s) in its design, assembly, adjustment, manufacture, construction, maintenance, installation, operation, control, care, supervision, attention to, servicing, upkeep, repair, inspection, testing, processing, producing, packaging, labeling, storing, advertising, warning, recommendations and sale, in that the Pet Food was contaminated and therefore failed to meet the reasonable expectations of the ordinary consumer when the Pet Food was used for its intended purposes, and/or its reasonably foreseeable uses, as heretofore mentioned.

1 31. Plaintiffs are informed and believe and thereon allege that at all relevant
2 times, Plaintiffs, and others similarly situated were using the Pet Food in a manner
3 consistent with its intended purpose, and/or its foreseeable use and in the manner
4 recommended by Defendants, and each of them, as heretofore mentioned. As a direct and
5 proximate result of the defects as aforesaid, the Pet Food failed to perform as safely as the
6 ordinary consumer would expect which caused illness to Plaintiffs' pets, thereby directly
7 and proximately causing the resulting damages to Plaintiffs and others similarly situated.

8
9 32. Plaintiffs are informed and believe and thereon allege that as a direct and
10 proximate result of the acts and omissions of Defendants, and each of them, as herein
11 alleged, Plaintiff s suffered the damages alleged herein in an amount within the
12 jurisdiction of this Court.

13
14 33. Plaintiffs are informed and believe and thereon allege that the
15 aforementioned acts of Defendants, and each of them, were willful, malicious,
16 intentional, oppressive, fraudulent and despicable and were done in willful and conscious
17 disregard of the rights, welfare and safety of Plaintiffs and others similarly situated,
18 thereby justifying the awarding of punitive and exemplary damages in an amount to be
19 determined at time of trial. Plaintiffs are informed and believe and on that basis alleges
20 that officers, directors and/or managing agents of each of the defendants acted in
21 conscious disregard of Plaintiffs' rights and the safety of Plaintiffs' pets by designing,
22 distributing, or selling the Pet Food, despite the known defects in the Pet Food, which the
23 officers, directors and/or managing agents of Defendants knew would injure persons such
24 as Plaintiffs. To the extent that any officer, director and/or managing agent of each of the
25 Defendants did not personally commit the malicious, oppressive or fraudulent acts
26 described above, each such defendant authorized or ratified the malicious, oppressive
27 and/or fraudulent act.

SECOND CAUSE OF ACTION

NEGLIGENCE

(Against All Defendants)

34. Plaintiffs hereby incorporates by reference the allegations in paragraphs 1 through 33 inclusive at though set forth herein in their entirety, and further alleges:

35. Defendants, and each of them owed a duty of care towards Plaintiffs and others similarly situated and the general public in which they were required to use reasonable diligence and due care in the manufacturing, design, marketing, distribution, inspection, storage and/or sale of The Pet Food. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them, breached their duty of care by causing contaminated Pet Food to enter stream of commerce where it was consumed by thousands of pet animals, many of whom became seriously ill and/or died and by concealing from and misrepresenting to the general public the defective condition of The Pet Food.

36. As a direct and legal result of the negligent acts and omissions of Defendants, and each of them, plaintiffs and others similarly situated have suffered damages, including, without limitation, veterinarian bills and related expenses.

37. Plaintiffs are informed and believe and thereon allege that at all relevant times, Defendants, and each of them, and their successors, so negligently, carelessly, recklessly and unlawfully designed, manufactured, built, sold, distributed, supplied, assembled, adjusted, constructed, installed, maintained, operated, controlled, cared for, created warnings for, supervised, attended to, serviced, repaired, inspected, tested, introduced into interstate and/or intrastate commerce for sale therein, advertised, recommended and stored the Pet Food, thereby direct and proximately causing the

1 resulting damages to Plaintiffs and others similarly situated as alleged herein.

2
3 38. Plaintiffs are informed and believe and thereon allege that as a direct
4 and proximate result of the negligent acts and omissions of Defendants, and each of
5 them,, Plaintiffs and others similarly situated suffered the damages alleged herein in an
6 amount within the jurisdiction of this Court.

7
8
9 **THIRD CAUSE OF ACTION**

10 **BREACH OF WARRANTIES**

11 **(Against All Defendants)**

12
13 39. Plaintiffs hereby incorporate by reference the allegations in paragraphs 1
14 through 38, inclusive as though set forth herein in their entirety.

15
16 40. Plaintiffs are informed and believe and thereon allege that at all times
17 herein mentioned, and prior thereto, Defendants, and each of them, and their successors,
18 designed, manufactured, assembled, adjusted, introduced into interstate and/or intrastate
19 commerce for sale therein, sold, distributed, supplied, constructed, maintained, controlled,
20 cared for, supervised, attended to, serviced, inspected, engaged in testing, processing,
21 producing, packaging, labeling, transporting, into interstate and/or intrastate commerce
22 for sale therein, storing, advertising, selling and recommending the Pet Food to the
23 general public and other ultimate users and for use with all knowledge and intent that it be
24 used by the general public and other ultimate users, and said defendants, and each of
25 them, including all fictitiously named defendants herein, and their successors impliedly
26 represented that the Pet Food was fit for the purpose and uses for which it was intended.

27
28 41. Plaintiffs and others similarly situated relied upon said representations

1 and warranties and had no knowledge of the dangerous, unsafe, hazardous, and unfit
2 quality of The Pet Food.

3
4 42. Plaintiffs are informed and believe and thereon allege that the Pet Food
5 as unsafe, hazardous, perilous, insecure, dangerous and unfit when used for the purposes
6 for which it was intended and in the manner recommended by Defendants, and each of
7 them, and their successors, which resulted in damages and injuries to Plaintiffs and others
8 similarly situated, as alleged herein.

9
10 **FOURTH CAUSE OF ACTION**
11 **UNFAIR COMPETITION AND BUSINESS PRACTICES**
12 **(CALIFORNIA BUSINESS AND PROFESSIONS CODE**
13 **SECTION 17200, ET SEQ.)**
14 **(Against All Defendants)**

15
16 43. Plaintiffs hereby incorporate by reference the allegations in paragraphs 1
17 through 42, inclusive, as though set forth herein in their entirety.

18
19 44. Defendants' unlawful and unfair practices as alleged herein violate
20 California law and constitute ongoing and continuous unfair business practices within the
21 meaning of Business and Professions Code §17200. Such practices include, but are not
22 limited to, Defendants making false representations as to the safety of the Pet Food and
23 Defendants' concealment from members of the public the danger that the Pet Food posed
24 to dogs and cats while continuing to manufacture, market, sell and distribute The Pet
25 Food.

26
27 45. California Business and Professions Code §17200 prohibits unfair
28 competition and unfair business practices, including, "any unlawful, unfair or fraudulent

1 business act or practice” Defendants’ conduct as specified herein, constitutes a
2 violation of California Business and Professions Code §17200, et seq.

3
4 46. As a result of Defendants’ unfair business practices, Defendants have
5 reaped unfair benefits and illegal profits at the expense of Plaintiffs, the PLAINTIFF
6 CLASS and members of the public. Defendants should be made to disgorge their
7 ill-gotten gains and restore such monies to Plaintiffs and the PLAINTIFF CLASS.

8
9 47. Defendants’ unfair business practices entitle Plaintiffs and the
10 PLAINTIFF CLASS to seek preliminary and permanent injunctive relief, including but
11 not limited to, orders that the Defendants account for, disgorge and restore to Plaintiffs
12 and the PLAINTIFF CLASS the compensation unlawfully withheld from them.
13 Accordingly, Plaintiffs seek disgorgement of all profits resulting from these unlawful,
14 unfair, and fraudulent business practices, restitution, and other appropriate relief as
15 provided for by Business & Professions Code §17203.

16
17 **PRAAYER FOR RELIEF**

18
19 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of
20 them, as follows:

- 21 1. That causes of action one through four may be maintained as a class
22 action;
23 2. For general damages in an amount within the jurisdictional limits of this
24 court according to proof;
25 3. For special damages, including medical expenses and loss of earnings,
26 according to proof;
27 4. For punitive damages, according to proof;
28 5. For injunctive and equitable relief, including an accounting of profits and

1 restitution based on Defendants' unjust enrichment, according to proof

2 6. For cost of suit;

3 7. For attorneys fees pursuant to Code of Civil Procedure Section 1021.5
4 and other applicable provisions of law;

5 8. For interest at the legal rate; and

6 9. For such other and further relief as the Court may deem just and proper.

7
8 Dated: March 26, 2007

9 HELMER • FRIEDMAN, LLP
10 Gregory D. Helmer, P.C.
11 Andrew H. Friedman, P.C.

12 SCHONBRUN DE SIMONE SEPLow
13 HARRIS & HOFFMAN LLP
14 Paul L. Hoffman
15 Michael D. Seplow
16 Michael Morrison

17 By: 
18 Gregory D. Helmer, P.C.

19 Attorneys for Plaintiffs

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //


DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all claims.

Dated: March 26, 2007

HELMER • FRIEDMAN, LLP
Gregory D. Helmer
Andrew H. Friedman, P.C.

SCHONBRUN DE SIMONE SELOW
HARRIS & HOFFMAN LLP
Paul L. Hoffman
Michael D. Seplow
Michael Morrison

By: 
Gregory D. Helmer, P.C.

Attorneys for Plaintiffs

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Dean D. Pregerson and the assigned discovery Magistrate Judge is Paul L. Abrams.

The case number on all documents filed with the Court should read as follows:

CV07 - 2253 DDP (PLAx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)

Lois Grady/County of Fresno
Kaye Steinsapir/County of Los Angeles

(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):

(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

DEFENDANTS

Menu Foods Income Fund-Canada; Menu Foods
Midwest Corporation-Deleware;Menu Foods, Inc.-
New Jersey; Menu Foods Midwest Corp.-Deleware
County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):

Attorneys (If Known)

Gina Och (SBN170520)
Murchison & Cumming, LLP
801 South Grand Avenue, 9th Floor
Los Angeles, CA 90017
telephone 213-623-7400
facsimile 213-623-6336

II. BASIS OF JURISDICTION (Place an X in one box only.)

☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question
(U.S. Government Not a Party)

2 U.S. Government Defendant X 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)

☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☐ No ☐ **MONEY DEMANDED IN COMPLAINT:** \$ 5,000,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. ss 1332, 1441, and 1446. this is a diversity action.

VII. NATURE OF SUIT (Place an X In one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litig.
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158		PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input checked="" type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation		<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure		<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment		<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS - Third Party 28 USC 7609

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number

CV-71 (07/05)

CIVIL COVER SHEET

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)☐ Check here if the U.S. government, its agencies or employees is a named plaintiff.

Plaintiff Lois Grady - County of Fresno

Plaintiff Kaye Steinsapir - county of Los Angeles

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).☐ Check here if the U.S. government, its agencies or employees is a named defendant.

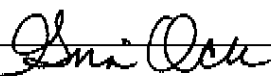
Menu Foods Income Fund - Canada; Menu Foods Midwest Corporation-Delaware; Menu Foods, Inc.-New Jersey; Manu Foods-Midwest Corporation-Deleware

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

County of Fresno

X. SIGNATURE OF ATTORNEY (OR PRO PER):



Date

4/5/07

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate Instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))